



Notices of Final Rulemaking

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**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The proposed rulemaking is a result of a Five-year Review Report, approved by the Governor's Regulatory Review Council on December 7, 2010, in which the Department recommended that R6-6-2113 be repealed since it is no longer enforced.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

Not applicable, as pursuant to A.R.S. § 41-1055(D)(3), an agency is not required to prepare an EIS for a rulemaking that decreases monitoring, recordkeeping or reporting burdens on agencies.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

None

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

None

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

Not applicable

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

None

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Not applicable

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

None

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

None

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable

**15. The full text of the rules follows:**

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY  
DEVELOPMENTAL DISABILITIES**

**ARTICLE 21. DIVISION PROCUREMENT AND RATE SETTING - QUALIFIED VENDORS**

Section

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R6-6-2113. ~~Transition to the Qualified Vendor Process~~ Repealed

**ARTICLE 21. DIVISION PROCUREMENT AND RATE SETTING - QUALIFIED VENDORS**

**R6-6-2113. ~~Transition to the Qualified Vendor Process~~ Repealed**

- ~~A.~~** Prior to July 1, 2003, the Division shall review the ISPs for all consumers receiving community developmental disability services and shall review the Qualified Vendor Agreements to determine if the current provider is a Qualified Vendor and can meet the consumer's needs based on the consumer's ISP and the services described in the Qualified Vendor Agreement.
- ~~B.~~** The current provider of service shall provide written assurances to the Division in a manner prescribed by the Division confirming that the consumer's needs, as described in the ISP, are being met.
- ~~C.~~** The Division shall issue an authorization effective July 1, 2003 to the current provider if it is determined that the program plan matches the consumer needs as defined in the ISP, the current provider is a Qualified Vendor and the current provider provides written assurance that the consumer's needs, as described in the ISP, are being met.
- ~~D.~~** The Division shall post to its web site a Vendor Call for Services and notify Qualified Vendors via list serv if it determines that the current provider cannot continue to meet the needs of the consumer based on the ISP, that the current provider is not a Qualified Vendor, or the current provider does not provide written assurance that the consumer's needs, as described in the ISP, are being met.

**NOTICE OF FINAL RULEMAKING**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

*Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 236.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 19, 2010.*

[R12-06]

**PREAMBLE**

- 1. Article, Part, or Section Affected (as applicable)      Rulemaking Action**
- |            |             |
|------------|-------------|
| R12-4-406  | Amend       |
| R12-4-518  | Amend       |
| R12-4-1101 | New Section |
| R12-4-1102 | New Section |
- 2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: A.R.S. § 17-231(A)(1)
- Implementing statute: A.R.S. §§ 5-311(A)(5), 17-255.01, 17-255.02, and 17-255.03
- 3. The effective date of the rules:**
- January 10, 2012
- a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
- The immediate effective date is allowed under A.R.S. § 41-1032(A)(1), which allows a rule to become effective immediately to preserve the public peace, health or safety. Dreissena species (quagga and zebra mussels) pose a threat to public health and safety in Arizona because of their potential to contaminate state waterways, which is likely to cause economic or environmental harm to residents and businesses in Arizona. The unrestricted spread of quagga and zebra mussels has far-reaching financial and ecological impacts that can affect virtually every resident of the state. These mussels cost millions of dollars annually to control. When present, they become a serious problem for water delivery systems and industrial facilities using this water. In the United States, Congressional researchers estimated that zebra mussels alone cost the power industry \$3.1 billion and industries, businesses, and communities more than \$5 billion from 1993 to 1999. California spends well over \$1.5 million annually to hyper-chlorinate the water and remove the dead mussels from their water delivery systems. The establishment of mandatory conditions for movement of watercraft in this state is essential in preventing the spread of these mussels to unaffected water bodies. Establishing conditions for the overland movement of watercraft is crucial in helping to prevent the accidental spread of mussels; and the financial, economic, and ecological

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costs that will surely accompany them; to unaffected water bodies. Quagga mussel populations are currently established in Lake Mead, Lake Mohave, Lake Havasu, and Lake Pleasant. While zebra mussels have not yet been detected in Arizona, they pose a serious potential threat as they are present in California and Colorado. The establishment of decontamination procedures in rule, as specified in A.R.S. § 17-255.01(C)(2), is necessary to fully implement this new legislation and guide the public's expectations regarding actions that may be mandatory on their part. It benefits the public, and in particular water delivery systems and industrial facilities using this water, to have this new rule in place immediately upon filing with the Secretary of State. The rulemaking will benefit all Arizonans by proactively addressing the far-reaching financial and ecological impacts that these bio-fouling mussels pose to public health and safety and Arizona's waterways.

**b. If the agency selected a date later than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(B):**

Not applicable

**4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Emergency Rulemaking: 17 A.A.R. 1218, June 24, 2011

Notice of Rulemaking Docket Opening: 17 A.A.R. 1160, June 10, 2011

Notice of Proposed Rulemaking: 17 A.A.R. 1154, June 10, 2011

Notice of Emergency Rulemaking Renewal: 17 A.A.R. 2376, November 25, 2011

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Tom McMahon, Invasive Species Coordinator

Address: Arizona Game and Fish Department, WMHB  
5000 W. Carefree Highway  
Phoenix, AZ 85086

Telephone: (623) 236-7271

Fax: (623) 236-7366

E-mail: [tmcMahon@azgfd.gov](mailto:tmcMahon@azgfd.gov)

Please visit the AZGFD web site to track progress of this rule and any other agency rulemaking matters at [http://www.azgfd.gov/inside\\_azgfd/rules/rulemaking\\_updates.shtml](http://www.azgfd.gov/inside_azgfd/rules/rulemaking_updates.shtml).

**6. An agency's justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

Laws 2009, 3rd Special Session, Ch. 7, § 28(B)(1), which allows an agency to pursue rulemaking for an authorization or requirement enacted by the legislature after January 1, 2009. Laws 2009, 1st Regular Session, Ch. 77 became effective September 30, 2009. This legislation allows the Department to establish orders, enforce laws, and adopt rules designed to prevent the spread of aquatic invasive species.

The Aquatic Invasive Species legislation was supported during legislative hearings by a broad array of stakeholders including the Salt River Project, Central Arizona Project, Arizona Municipal Water Users Association, and Roosevelt Water Conservation District.

Quagga and zebra mussels accumulate on underwater surfaces and have the ability to impair water delivery structures and systems. These mussels reproduce rapidly; resulting in large populations in affected water bodies, and creating negative ecological and environmental impact to Arizona waterways and water delivery systems.

The principle pathway for quagga mussel transfer between watersheds is the overland movement of boats and equipment with attached adult mussels and the movement of water itself containing juvenile mussels in un-drained bilge areas, live wells, internal storage spaces, or conveyances designed to carry water. The initial movement of these mussels to the Colorado River was in all likelihood as a hitchhiker on a boat or equipment item that was moved more than 1,000 miles overland.

On March 1, 2011, in accordance with A.R.S. § 17-255.01(B)(1), the Director of the Arizona Game and Fish Department amended Orders listing quagga and zebra mussels as aquatic invasive species, listing locations where these mussels are present, documented, or suspected, and establishing conditions for movement of watercraft, vehicles, conveyances, or other equipment from listed waters.

The proposed rules will provide definitions for terms related to aquatic invasive species and establish prohibitions on the movement of identified aquatic invasive species, inspection requirements, and decontamination protocols.

R12-4-1101 is a new rule, providing definitions for terms used within Article 11.

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R12-4-1102 is a new rule, establishing prohibitions designed to prevent the movement of aquatic invasive species, protocols to be followed before a person may move watercraft from waters where aquatic invasive species are present to other waters, inspection requirements, exemptions to the rule, and states where Director's Orders can be found.

R12-4-406 is amended to reference R12-4-1102.

R12-4-518 is amended to require regatta sponsors and participants to comply with the requirements established under Article 11.

**7. A reference to any study relevant to the rule that the agency reviewed and proposes to either rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not rely on any study in its evaluation of or justification for the rule.

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

The Commission believes the rulemaking will benefit private consumers and public and private entities by addressing a current threat to the state's economy, ecology, and public health and safety.

The Commission anticipates that the proposed rulemaking will not impose significant costs on private consumers, public or private employment, or any political subdivisions in this state.

The Commission anticipates the Department and local law enforcement agencies will incur increased costs due to the time needed to train enforcement officers, conduct inspections, and the enforcement of decontamination protocols.

The Commission has determined that the benefits of the rulemaking outweigh any costs.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

At the request of the Department's Attorney General, R12-4-514 was removed as the rule addresses proof of registration requirements. In addition, livery owners are subject to the rule as the definition of "owner" provided under R12-4-1101 includes a business.

Under R12-4-406(B), the reference to R12-4-430 was placed with other exemptions as it is more appropriately an exemption rather than an authorization. A reference to the exemptions prescribed under A.R.S. §§ 17-255.02 and 17-255.04 was also added to this subsection.

R12-4-1101, the definition for "person" was revised to incorporate the definition for "person" prescribed under A.R.S. § 1-215.

R12-4-1101, for all definitions, where applicable, the term "individual" was replaced with the term "person."

R12-4-1102(F) was revised to provide the Director's Orders in a list.

Minor grammatical and style corrections were made at the request of the Governor's Regulatory Review Council staff.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The agency did not receive any public or stakeholder comments about the rulemaking.

**12. All agency's shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

**a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:**

The rule does not require a permit.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:**

Federal law is not applicable to the subject of the rule.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

The agency has not received an analysis that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

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Not applicable

**14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

The rules were previously made as an emergency rule.

Notice of Emergency Rulemaking: 17 A.A.R. 1218, June 24, 2011

Notice of Emergency Rulemaking Renewal: 17 A.A.R. 2376, November 25, 2011

Changes between the emergency rulemaking and final rulemaking include:

At the request of the Department's Attorney General, R12-4-514 was removed as the rule addresses proof of registration requirements. In addition, livery owners are subject to the rule as the definition of "owner" provided under R12-4-1101 includes a business.

Under R12-4-406(B), the reference to R12-4-430 was placed with other exemptions as it is more appropriately an exemption rather than an authorization. A reference to the exemptions prescribed under A.R.S. §§ 17-255.02 and 17-255.04 was also added to this subsection.

R12-4-518(D), requiring a regatta sponsor and all participants to comply with requirements established under A.R.S. Title 17, Chapter 2, Article 3.1 and 12 A.A.C. Chapter 4, Article 11.

R12-4-1101, the definition for "person" was revised to incorporate the definition for "person" prescribed under A.R.S. § 1-215.

R12-4-1101, for all definitions, where applicable, the term "individual" was replaced with the term "person."

R12-4-1102(F) was revised to provide the Director's Orders in a list.

**15. The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 4. LIVE WILDLIFE**

Section

R12-4-406. Restricted Live Wildlife

**ARTICLE 5. BOATING AND WATER SPORTS**

Section

R12-4-518. Regattas

**ARTICLE 11. AQUATIC INVASIVE SPECIES**

Section

R12-4-1101. Definitions

R12-4-1102. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

**ARTICLE 4. LIVE WILDLIFE**

**R12-4-406. Restricted Live Wildlife**

A. No change

B. ~~With the exception of all live cervids, which shall not be imported, transported, or possessed except as allowed under R12-4-430, In addition to any applicable federal license or permit an individual shall possess an the appropriate special license listed in under R12-4-409(A) or act under a lawful exemption from the requirements of this Article in order to use possess wildlife listed in under this Section for any activity prohibited by under A.R.S. §§ 17-255.02, 17-306, or R12-4-402, or R12-4-1102. Exemptions from these requirements are listed in under A.R.S. § 17-255.04, R12-4-316, R12-4-404, R12-4-405, R12-4-407, R12-4-425, and R12-4-427, and R12-4-430.~~

C. No change

D. No change

E. No change

F. No change

G. No change

1. No change

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**ARTICLE 5. BOATING AND WATER SPORTS**

**R12-4-518. Regattas**

- A.** No change
  - 1. No change
  - 2. No change
  - 3. No change
- B.** No change
- C.** When a regatta applicant is informed in writing by the Coast Guard that a permit is not required, such regatta may take place, but shall not relieve the regatta sponsor of any responsibility for the public welfare or confer any exemption from state boating and watersports laws and rules.
- D.** The regatta sponsor and all participants shall comply with aquatic invasive species requirements established under A.R.S. Title 17, Chapter 2, Article 3.1 and 12 A.A.C. 4, Article 11.

**ARTICLE 11. AQUATIC INVASIVE SPECIES**

**R12-4-1101. Definitions**

In addition to the definitions provided under A.R.S. §§ 5-301 and 17-255, the following definitions apply to this Article, unless otherwise specified:

“Aquatic invasive species” means those species listed in Director’s Order 1.

“Certified agent” means a person who meets Department standards to conduct inspections authorized under A.R.S. § 17-255.01(C)(1).

“Conveyance” means a device designed to carry or transport water. Conveyance includes, but is not limited to, dip buckets, water hauling tanks, and water bladders.

“Equipment” means an item used either in or on water; or to carry water. Equipment includes, but is not limited to,



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trailers used to launch or retrieve watercraft, rafts, inner tubes, kick boards, anchors and anchor lines, docks, dock cables and floats, buoys, beacons, wading boots, fishing tackle, bait buckets, skin diving and scuba diving equipment, submersibles, pumps, sea planes, and heavy construction equipment used in aquatic environments.

“Operator” means a person who operates or is in actual physical control of a watercraft, vehicle, conveyance or equipment.

“Owner” means a person who claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

“Person” has the same meaning as defined under A.R.S. § 1-215.

“Release” means to place, plant, or cause to be placed or planted in waters.

“Transporter” means a person responsible for the overland movement of a watercraft, vehicle, conveyance, or equipment.

“Waters” means surface water of all sources, whether perennial or intermittent, in streams, canyons, ravines, drainage systems, canals, springs, lakes, marshes, reservoirs, ponds, and other bodies or accumulations of natural, artificial, public or private waters situated wholly or partly in or bordering this state.

**R12-4-1102. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols**

**A. A person shall not, unless authorized under Article 4:**

1. Possess, import, ship, or transport into or within this state an aquatic invasive species, unless authorized by the Director.
2. Sell, purchase, barter, or exchange in this state an aquatic invasive species.
3. Release an aquatic invasive species into waters or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.

**B. Upon removing a watercraft, vehicle, conveyance, or equipment from any waters listed in Director’s Order 2 and before leaving that location, a person shall:**

1. Remove all clinging materials such as plants, animals, and mud.
2. Remove any plug or other barrier that prevents water drainage or, where none exists, take reasonable measures to drain or dry all compartments or spaces that hold water. Reasonable measures include, but are not limited to, emptying bilges, application of absorbents, or ventilation.

**C. Before transporting a watercraft, vehicle, conveyance, or equipment to any waters located within or bordering this state from waters or locations where aquatic invasive species are suspected or known to be present, as listed in Director’s Order 2, a person shall comply with the mandatory conditions and protocols identified in Director’s Order 3 for decontamination of watercraft, vehicles, conveyances, and equipment.**

**D. Department employees, certified agents, and Arizona peace officers authorized under A.R.S. § 17-104 may inspect a watercraft, vehicle, conveyance, or equipment for the purposes of determining compliance with A.R.S. Title 17, Chapter 2, Article 3.1 and this Section.**

**E. If the presence of an aquatic invasive species is documented or suspected on or in a watercraft, vehicle, conveyance, or equipment, a Department employee or any Arizona peace officer may order the person to decontaminate or cause to be decontaminated such watercraft, vehicles, conveyances, and equipment using the mandatory protocols described in Director’s Order 3.**

**F. The following Director’s Orders are available at any Department office and online at [azgfd.gov](http://azgfd.gov):**

1. Director’s Order 1 – Listing of Aquatic Invasive Species for Arizona;
2. Director’s Order 2 – Designation of Waters or Locations Where Listed Aquatic Invasive Species are Present; and
3. Director’s Order 3 – Mandatory Conditions on the Movement of Watercraft, Vehicles, Conveyances, or Other Equipment from Listed Waters Where Aquatic Invasive Species are Present.

**G. This Section does not apply to owners and operators exempt under A.R.S. § 17-255.04.**

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

*Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 236.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 8, 2011.*

[R12-05]

**PREAMBLE**

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**

R12-15-101	Amend
R12-15-107	New Section
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 45-105(B)  
Implementing statute: A.R.S. § 45-118
- 3. The effective date of the rule:**

July 1, 2012

  - a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable
  - b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Pursuant to A.R.S. § 41-1032(B), the rule will become effective on July 1, 2012, which is more than 60 days after the filing of the rule with the Secretary of State. The Department of Water Resources ("Department") has determined that good cause exists for an effective date of July 1, 2012. The purpose of this rulemaking is to adopt a rule establishing the municipality fees authorized by A.R.S. § 45-118 for fiscal years beginning with fiscal year 2012-2013. Through a Notice of Exempt Rulemaking filed with the Secretary of State on August 10, 2011, the Department previously adopted a rule establishing the municipality fees for fiscal year 2011-2012 ("FY 2011-2012 Municipality Fee Rule"). The FY 2011-2012 Municipality Fee Rule will repeal automatically effective July 1, 2012. An effective date of July 1, 2012 for this rule will allow the rule to become effective immediately upon the expiration of the FY 2011-2012 Municipality Fee Rule. The public will not be harmed by the later effective date because the effective date will coincide with the beginning of the first fiscal year in which the fees will apply.
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 17 A.A.R. 1882, September 23, 2011  
Notice of Proposed Rulemaking: 17 A.A.R. 1846, September 23, 2011
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name:	Ken Slowinski, Chief Counsel
Address:	Department of Water Resources 3550 N. Central Ave. Phoenix, AZ 85012
Telephone:	(602) 771-8472
Fax:	(602) 771-8686
E-mail:	kcslowinski@azwater.gov
or	
Name:	Doug Dunham, Legislative Liaison
Address:	Department of Water Resources 3550 N. Central Ave.

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Phoenix, AZ 85012

Telephone: (602) 771-8490

Fax: (602) 771-8690

E-mail: [dwdunham@azwater.gov](mailto:dwdunham@azwater.gov)

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

**Reasons for initiating the rule**

During the 2011 regular legislative session, the legislature passed and the Governor signed into law Senate Bill ("S.B.") 1624, the Environment Budget Reconciliation Bill (Laws 2011, Ch. 36, § 2, effective July 20, 2011). Section 2 of S.B. 1624 amended the Arizona Revised Statutes by adding section 45-118. A.R.S. § 45-118 authorizes the Department to assess and collect a fee from each municipality in the state ("municipality fee"). Section 7(C) of S.B. 1624 provides that the Department is exempt from the rulemaking requirements in A.R.S. Title 41, Chapter 6 for the purposes of establishing the municipality fee until July 1, 2012. As explained in section 3 above, the Department adopted the FY 2011-2012 Municipality Fee Rule through a Notice of Exempt Rulemaking filed with the Secretary of State on August 10, 2011. The FY 2011-2012 Municipality Fee Rule will repeal automatically effective July 1, 2012. The purpose of this rulemaking is to adopt a rule establishing the municipality fee for fiscal years beginning with fiscal year 2012-2013.

A.R.S. § 45-118 provides that the municipality fee shall be assessed proportionately, based on the population of each municipality. A.R.S. § 45-118 further provides that the Director of the Department ("Director") shall deposit all municipality fees in the water resources fund established by A.R.S. § 45-117. The water resources fund was established in 2010 and, in addition to the municipality fee authorized by A.R.S. § 45-118, the fund consists of certain application and filing fees paid to the Department. A.R.S. § 45-117(A). Monies in the water resources fund are to be used by the Department to carry out the purposes of Title 45, Arizona Revised Statutes. A.R.S. § 45-117(C). Monies in the fund are subject to legislative appropriation, and any monies remaining in the fund at the end of a fiscal year remain in the fund and are exempt from lapsing. A.R.S. § 45-117(B).

Because A.R.S. § 45-118 requires the Director to assess the municipality fee proportionately based on each municipality's population, the only thing the Director must determine in establishing the fee for a fiscal year is the total amount of fees to be assessed and collected from all municipalities during the fiscal year. After the total amount of municipality fees is determined, the amount to be assessed and collected from each municipality is arrived at by performing a simple mathematical calculation based on each municipality's population. A.R.S. § 45-118 does not provide any guidance to the Director on how to determine the total amount of municipality fees to be assessed and collected during a fiscal year. However, Section 7 of S.B. 1624 does contain language expressing the legislature's intent regarding the maximum amount of municipality fees the Department may assess and collect during a fiscal year. Section 7(B) of S.B. 1624 (as applied to the years following fiscal year 2011-2012) provides that it is the intent of the legislature that the revenue generated by the municipality fees collected pursuant to A.R.S. § 45-118 shall not exceed \$7,000,000.

The proposed rule contains a methodology for determining the total amount of fees the Director will assess and collect from all municipalities during a fiscal year. The first step is to determine the maximum total amount of fees the Director may assess and collect from all municipalities during the fiscal year pursuant to A.R.S. § 45-118. While the legislature expressed its intent in S.B. 1624 that the total amount of municipality fees not exceed \$7,000,000, the Department recognizes that the legislature may choose in the future to express a different intent. For that reason, the proposed rule provides that the total maximum amount of municipality fees the Director may assess and collect during a fiscal year is \$7,000,000, unless the legislature expresses a contrary intent in either statute or session law.

Although the Department may assess and collect the maximum amount of municipality fees allowed in a fiscal year, the Department recognizes that its authority to use the fees in the water resources fund during a fiscal year is restrained by the amount of money the legislature appropriates to it from the fund for that fiscal year. Based on the amount of monies appropriated to the Department from the fund for fiscal year 2011-2012, the Department has determined that if it were to assess and collect the maximum amount of municipality fees allowed in a fiscal year, the amount of money in the water resources fund during a fiscal year likely would greatly exceed the amount of money appropriated to the Department from the fund for the year. For that reason, the proposed rule provides that after the Director determines the maximum amount of fees the Department may assess and collect in the fiscal year, the Director shall reduce that amount by the amount of monies carried over in the water resources fund from the prior fiscal year.

Because the amount of money appropriated to the Department from the water resources fund in any given year in the future could be significantly different than the amount appropriated to it from the fund in fiscal year 2011-2012, the proposed rule also includes provisions allowing the Director to adjust the amount of the reduction if necessary to allow the Department to use all of the money appropriated to it from the water resources fund in the fiscal year or to prevent the over-accumulation of unobligated monies in the fund at the end of the fiscal year. It is important to note that in no event can the total amount of municipality fees assessed by the Department for a fiscal year exceed the maximum amount intended by the legislature, which currently is \$7,000,000.

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*An explanation of the rule*

R12-15-101 sets forth the definitions applicable to Title 12, Article 1. The Department is proposing to amend R12-15-101 to add new subsections and renumber other subsections. Specifically, the Department is adding definitions to R12-15-101 for the terms, “fiscal year,” “municipality,” “population,” and “water resources fund.”

Subsection (A) of R12-15-107 requires each municipality in the state to pay a fee to the Department for each fiscal year beginning with fiscal year 2012-2013 in the amount calculated pursuant to subsection (B) and by the dates specified in subsection (E).

Subsection (B) provides that a municipality’s fee will be calculated in the following manner:

1. Determine the total amount of fees the Director will assess and collect from all municipalities during the fiscal year. The Director will determine that amount by first determining the maximum total amount of fees the Director may assess and collect from all municipalities during the fiscal year pursuant to A.R.S. § 45-118. Unless the legislature expresses a contrary intent in statute or session law, this amount will be \$7,000,000. The Director will then subtract from that amount the amount of unobligated monies in the water resources fund at the beginning of the fiscal year. The Director may decrease this reduction if necessary to allow the Department to use all the money appropriated to it from the water resources fund for the fiscal year, or increase the reduction if necessary to avoid an excessive accumulation of unobligated monies in the fund at the end of the fiscal year.
2. Divide the municipality’s population by the total population of all municipalities in the state. The population numbers will all be based on the most recent United States decennial census.
3. Multiply the dollar amount obtained in step 1 with the result obtained in step 2. This number will be the municipality’s fee for a fiscal year.

Subsection (C) states that the Director shall mail each municipality a notice of its municipality fee by July 15 of each fiscal year. Such notice shall be mailed to the municipality’s city or town manager or city or town attorney. Although not provided in the rule, the Department will issue an unofficial estimate of each municipality’s fee for a fiscal year before the start of the fiscal year so that municipalities may include the estimated fees within their budgetary planning. The Department intends to post the estimated fees on its web site by December 31 for the following fiscal year.

Subsection (D) allows each municipality to seek review of the calculation of its fee. Review shall be limited only to whether the Director’s calculation of the fee contained a mathematical, clerical or typographical error.

Subsection (E) establishes the timing of payment of the municipality fee. A municipality shall pay at least one-half of its fee by August 15 of that fiscal year and any remaining portion of the fee by January 15 of the fiscal year. If the due date for a payment falls on a weekend, the payment is due on the next business day.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

**1. Identification of the proposed rulemaking.**

The purpose of this proposed rulemaking is not to change any specific conduct of the regulated community. Rather, the purpose of this rulemaking is to establish a new fee to be assessed and collected from municipalities, as authorized by A.R.S. § 45-118. These fees will be deposited in the water resources fund established by A.R.S. § 45-117 and used by the Arizona Department of Water Resources (“Department”) to carry out the purposes of Title 45, Arizona Revised Statutes.

As a result of state revenue shortfalls, the amount of money appropriated to the Department from the state general fund in fiscal years 2010-2011 and 2011-2012 was significantly less than the amounts appropriated to the Department in prior fiscal years. This has required the Department to lay off employees, close its offices outside of Phoenix, and curtail certain functions it has historically performed, including state-wide water monitoring and planning, data collection, protection of Arizona’s Colorado River entitlements, preparation of hydrologic studies and support for streamflow and flood warning monitoring. To provide the Department with alternative funding, the legislature enacted legislation during the 2011 regular session that added section 45-118 to the Arizona Revised Statutes. Laws 2011, Ch. 36, § 2. A.R.S. § 45-118 authorizes the Department to assess and collect fees from each municipality in the state (“municipality fees”) and deposit the fees into the water resources fund. A session law included in the legislation limits the total amount of municipality fees the Department may collect during a fiscal year to \$7,000,000. Laws 2011, Ch. 36, § 7(B).

Through this rulemaking, the Department is proposing to adopt a rule establishing the municipality fees. These fees will allow the Department to acquire alternative revenues and allow the Department to better perform the activities necessary for it to accomplish its mission of securing long-term dependable water supplies for Arizona’s communities.

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2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.

Incorporated municipalities in the state will be directly affected by and bear the costs of the proposed rulemaking. This is because the municipality fees will be assessed directly on and collected from municipalities.

The Department will directly benefit from the proposed rulemaking because the municipality fees will be deposited in the water resources fund and will be used by the Department to carry out the purposes of Title 45, Arizona Revised Statutes, subject to appropriation by the legislature.

3. Cost-benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule.

Probable costs to the Department of the proposed rulemaking include costs associated with submitting bills to each municipality on an annual basis. The Department would not be required to hire new full time employees to implement and enforce this proposed rule. Current staff resources will be used to prepare and send bills to municipalities. A.R.S. § 45-118 does not provide the Department with authority to enforce the rule.

The proposed rulemaking will benefit the Department by allowing the Department to increase funding for its programs.

No other state agency will be affected by the implementation of the proposed rulemaking.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

Incorporated municipalities within the state of Arizona will directly bear the costs associated with the new municipality fees. The Department believes that the method of determining each municipality's fee represents the most reasonable and fair calculation of those fees. The actual cost to each municipality will vary year-to-year, depending on the total amount of municipality fees the Department assesses each year.

The municipality fees for fiscal year 2011-2012 were established by a rule adopted pursuant to a rulemaking exempt from the rulemaking requirements in Title 41, Chapter 6, Arizona Revised Statutes. Under that rule, the total amount of municipality fees assessed during the fiscal year were calculated by subtracting the amount of unobligated monies carried over in the water resources fund from the prior fiscal year (\$743,312.46) from \$7,000,000 (the maximum total amount of municipality fees the Department was authorized to assess and collect during the fiscal year). The result, \$6,256,687.54, amounts to approximately \$1.25 per person for each city and town. The individual municipality fees ranged from \$439.77 for the Town of Winkelman to \$1,800,995.14 for the City of Phoenix.

Under the proposed rule, the Department would calculate the total amount of municipality fees to be assessed during a fiscal year in the same manner as was done for fiscal year 2011-2012, with two possible deviations. First, should the legislature express its intent that the maximum total amount of municipality fees the Department may assess and collect during a fiscal year is an amount different than \$7,000,000, the Department would calculate the total amount of municipality fees to be assessed during the fiscal year using the maximum total amount expressed by the legislature instead of \$7,000,000. Second, the Director has the option of modifying the amount of the reduction of the unobligated monies in the water resources fund. The Director may do this in either of the following two ways: (1) the Director may decrease the amount of the reduction if the Director determines that the reduction would prevent the Department from using all the monies appropriated to it from the water resources fund for the fiscal year; or (2) the Director may increase the amount of the reduction if the Director determines that the reduction is insufficient to avoid the accumulation of an excessive amount of unobligated monies in the water resources fund at the end of the fiscal year.

These possible deviations from the manner in which the municipality fees were calculated for fiscal year 2011-2012 should not result in a significantly different impact to cities and towns than the impact for fiscal year 2011-2012 because a \$1,000,000 increase or decrease in the total municipality fees would result in an increase or decrease for each municipality of only approximately \$.20 per person included in their 2010 decennial census population number. Using the 2010 decennial census population numbers, if the Department were to assess \$7,000,000 of municipality fees in a fiscal year, each municipality would be required to pay a fee of approximately \$1.39 per person included in their census population. The individual municipality fees would range from \$492.02 for the Town of Winkelman to \$2,014,958.53 for the City of Phoenix. A \$1,000,000 increase or decrease would result in an increase or decrease of the municipality fee in a range of \$70.29 for the Town of Winkelman to \$287,851.22 for the City of Phoenix.

The proposed rulemaking will benefit incorporated municipalities within the state of Arizona by providing additional funding for the Department's programs that are essential for ensuring long-term dependable water supplies for Arizona's communities and for providing water supply information that is necessary for municipalities to plan future development.

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- c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The Department does not believe that businesses will be directly affected by this proposed rulemaking. However, it is expected that many municipalities will pass their municipality fees on to residents and businesses within their municipal boundaries through increased water rates, taxes or fees. If that occurs, the proposed rulemaking would have an indirect impact on those businesses required to pay the higher water rates, taxes or fees. However, the Department does not believe that this would result in a significant impact to any individual business class because, as stated in section 3(b) above, if the Department were to assess a total of \$7,000,000 in municipality fees in a fiscal year, this would amount to approximately \$1.39 per person included in each municipality's census population. A \$1,000,000 increase or decrease the total amount of municipality fees in the fiscal year would result in an increase or decrease of only approximately \$.20 per person included in the municipality's census population.

While the proposed rulemaking will not directly affect businesses, the Department believes that businesses will see benefits from the proposed rulemaking. Specifically, by providing additional funding to the Department, the proposed rulemaking will allow the Department to better meet its mission of securing long-term dependable water supplies for Arizona's communities. This will provide greater clarity to businesses regarding the availability of water for their current uses and any expansion of those uses. It also will allow existing businesses to remain in the state and new business to locate here.

4. Probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.

The Department does not believe that private or public employment in business, agencies and political subdivisions of this state will be directly affected by this rulemaking. Accordingly, the probable impact on private and public employment will be minimal or nonexistent.

Although the proposed rulemaking will require municipalities to pay additional fees to the Department, the Department does not believe this will impact employment within municipalities because it is expected that most municipalities will pass their fees on to residents and businesses within their municipal boundaries. As explained in section 3(c) above, the Department does not believe this will result in a significant economic impact to businesses, including employment by businesses.

5. Probable impact of the proposed rulemaking on small business.

- a. Identification of the small businesses subject to the proposed rulemaking.

The Department believes that, in most cases, the impacts on small businesses as a result of this proposed rulemaking will be negligible. It is expected that many municipalities will pass their fees on to residents and businesses within their municipal boundaries. In that case, small businesses of all types would be affected as a result of this proposed rulemaking. However, the Department anticipates that, even in those cases, the probable impact on small businesses will be minimal because if the Department were to assess \$7,000,000 of municipality fees in a fiscal year, an individual municipality's fee would amount to approximately \$1.39 per person included in the municipality's census population. A \$1,000,000 increase or decrease the total amount of municipality fees in the fiscal year would result in an increase or decrease of only approximately \$.20 per person included in the municipality's census population.

- b. Administrative and other costs required for compliance with the proposed rulemaking.

None

- c. A description of the methods that the agency may use to reduce the impact on small business.

Not applicable

- d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The Department believes that this proposed rulemaking significantly benefits all private persons and consumers located within the state of Arizona. Particularly, the proposed rulemaking will provide the Department with additional funding that will allow it to perform activities that will benefit communities throughout the entire state of Arizona, including private persons and consumers who live in those communities, by securing long-term dependable water supplies. Such activities include state-wide water monitoring and planning, data collection, protection of Arizona's Colorado River entitlements, preparation of hydrologic studies and support for streamflow and flood warning monitoring.

There will be no direct costs to private persons and consumers. As mentioned above, it is expected that many municipalities will pass their fees on to residents and businesses within their municipal boundaries through increased water rates, taxes or fees. However, the costs to private persons and consumers in such cases will be minimal. If the Department were to assess \$7,000,000 of municipality fees in a fiscal year, an individual municipality's fee would amount to approximately \$1.39 per person included in the municipality's census population. A

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\$1,000,000 increase or decrease the total amount of municipality fees in the fiscal year would result in an increase or decrease of only approximately \$.20 per person included in the municipality's census population.

6. Probable effect on state revenues.

This rulemaking will have no direct impact on state general funding revenues. The revenues generated from this fee will be directed to the water resources fund. Monies in the water resources fund are used by the Department to carry out the purposes of Title 45, Arizona Revised Statutes, subject to appropriation by the legislature. With the possible deviations discussed in section 3(b) above, the revenues generated from this fee in a fiscal year will be \$7,000,000 minus the amount of monies carried over in the water resources fund from the prior fiscal year.

7. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives.

No other less intrusive or less costly methods are available to the Department to achieve the purpose of this rulemaking. The Department's appropriation from the state general fund has been significantly reduced and the legislature enacted A.R.S. § 45-118 in order to allow the Department to continue providing services to communities in the state of Arizona. Without the implementation of the municipality fee, the Department's ability to meet its mission would be significantly affected and could pose health and safety risks.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

None

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

**Comment from the City of Surprise:** The proposed rule provides that the Director shall reduce the maximum total amount of municipality fees the Department may assess and collect from all municipalities in a fiscal year by the amount of any unobligated monies in the Water Resources Fund at the beginning of the fiscal year. However, the proposed rule also contains a provision that allows the Director to increase or decrease the amount of the reduction under certain circumstances. If the reduction were decreased, could the fee exceed \$7,000,000?

**Response:** In no event could the total amount of fees assessed by the Department in a fiscal year exceed the maximum total amount intended by the legislature. Currently, that amount is \$7,000,000. Therefore, unless the legislature expresses its intent in the future that the Department may assess and collect a total of more than \$7,000,000 in municipality fees in a fiscal year, any decrease in the reduction could not result in the total fees exceeding \$7,000,000.

**Comment from the City of Surprise:** In what cases could the Director decrease the reduction?

**Response:** The Director may decrease the reduction if the Director determines that doing so is necessary to allow the Department to use all the monies appropriated to it from the Water Resources Fund in a fiscal year. This is most likely to happen if the legislature were to appropriate significantly more money to the Department from the fund than it has in the past two fiscal years.

**Comment from the League of Arizona Cities and Towns:** We take issue with the philosophy of asking only local government and local residents to subsidize the operation of state agencies.

**Response:** The legislature has authorized the Department to assess the fee only on municipalities. The Department does not currently have legislative authority to assess such a fee on other entities. For that reason, no changes have been made to the rule in response to this comment.

**Comment from the League of Arizona Cities and Towns:** We disagree with the idea of making this an ongoing, permanent fee to be assessed on municipalities.

**Response:** As enacted by the legislature, this is a permanent fee to be assessed on municipalities. See A.R.S. § 45-118. For that reason, it is appropriate for the Department to adopt a permanent rule providing a methodology for calculating the fee for each fiscal year and establishing the dates when the fees are payable. No changes have been made to the rule in response to this comment.

**Comment from the League of Arizona Cities and Towns:** Notification of the amount of the municipality fee goes out on July 15. However, municipalities produce and adopt their budgets on July 1. Notice of the fee prior to adoption of the budget would be helpful in allowing municipalities to accurately predict their budgets.

**Response:** The Department will issue an unofficial estimate of each municipality's fee for a fiscal year before the start of the fiscal year so that municipalities may include the estimated fees within their budgetary planning. The Department intends to post the estimated fees on its web site by December 31 for the following fiscal year. However, it is important to keep in mind that the estimated fees will be posted prior to the legislative session, and actions taken by the legislature during the legislative session could result in the actual fees being significantly different than the estimated fees. No changes have been made to the rule in response to this comment.

**Comment from the Northern Arizona Municipal Water Users Association, the City of Page, the League of Arizona Cities and Towns, the City of Casa Grande, the City of Mesa, the City of Peoria, the Town of Fountain**

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**Hills and the City of Bisbee:** The fee is not equitable to all water users because the fee does not apply to all private parties. For example, agricultural, private, and industrial water stakeholders do not have to pay the fee.

**Response:** The legislature has authorized the Department to assess the fee only on municipalities. The Department does not have legislative authority to assess such a fee on entities such as agricultural, private, and industrial water stakeholders. Therefore, no changes have been made to the rule in response to this comment.

**Comment from the Northern Arizona Municipal Water Users Association, the City of Yuma, the City of Safford, the City of Page, the League of Arizona Cities and Town, the City of Casa Grande, the Town of Fountain Hills and the City of Bisbee:** The proposed fee is a discriminatory tax on cities and only applies to a portion of Arizona residents and water users. The Department should work with the legislature to fix the fee structure so that it applies to all water users, public and private, cities and counties.

**Response:** The legislature has authorized the Department to assess the fee only on municipalities. The Department does not have legislative authority to assess such a fee on other entities. Therefore, no changes have been made to the rule in response to this comment. With respect to the comment that the Department should work with the legislature to change the fee so that it applies to all water users, this comment is beyond the scope of this rulemaking.

**Comment from the City of Yuma:** The Department and the state of Arizona do not have the authority to impose the fee on priority federal allocation of water.

**Response:** The fee is population based and is not assessed on a municipality's water supplies or allocations. Municipalities are free to recover the cost as they see fit. Municipalities that serve water may elect to pass the fee on to their water customers, or they may choose to pay the fee from revenues unrelated to water service. No changes have been made to the rule in response to this comment.

**Comment from the Northern Arizona Municipal Water Users Association, the City of Mesa, the League of Arizona Cities and Towns, the City of Page, the City of Peoria and the City of Casa Grande:** The fee is not equitable and fair because it targets municipalities and ignores the hundreds of private water companies, water improvement districts and agricultural districts. This statute should be modified so that collection of the fee is the responsibility of the counties, which have the authority and mechanism to collect the fees and taxes that are tied with the land.

**Response:** The legislature has authorized the Department to assess the fee only on municipalities. The Department does not have legislative authority to assess such a fee on other entities. Therefore, no changes have been made to the rule in response to this comment. The comment stating that the statute should be modified so that the collection of the fee is the responsibility of the counties is beyond the scope of this rulemaking.

**Comment from the City of Mesa:** The fee is arbitrary and capricious because it is based on population and the fee is not tied to water supply or water use.

**Response:** The statute authorizing the fee, A.R.S. § 45-118, requires the fee to be based on population and not water supply or water use. The Department must presume the statute is constitutional. Therefore, review of the constitutionality of the statute is beyond the authority of the Department. Moreover, municipalities are free to recover the cost of the fee as they see fit and those municipalities that serve water may choose to pass the fee on to their water customers. No changes have been made to the rule in response to this comment.

**Comment from the City of Mesa:** The Department's fees are traditionally tied to receipt of water resource benefits. The fee may result in distrust and conflict between various water users depending on whether the Department does or does not grant greater benefits to the fee-paying municipalities.

**Response:** A.R.S. § 45-118 requires the Department to assess the fee on all municipalities, regardless of whether they serve water. Whether this is wise legislative policy is beyond the scope of this rulemaking. No changes have been made to the rule in response to this comment.

**Comment from the City of Peoria:** The city is concerned that the only limitation on the amount of fees that may be charged to municipalities is the intent of the legislature and that, should the legislature express a different intent, the fees could grow to well in excess of the current \$7,000,000 limitation. Having divorced the Department from the General Fund, the legislature no longer has any financial stake in setting limits to the Department's fees. The City suggests that either the \$7,000,000 total be expressed as a maximum amount that the Department may collect in the rule or that the Department must seek approval from all municipalities in Arizona to increase the limitation above \$7,000,000.

**Response:** The Department disagrees with the statement that the Department has been divorced from the General Fund. The Department received an appropriation from the General Fund for fiscal year 2011-2012. In response to the remainder of this comment, the Department believes the rule properly allows the Department to assess municipality fees up to the limit imposed by the legislature even if the legislature raises that limit in the future. If the rule did not provide the Department with that flexibility, the Department would not be able to assess the full amount of fees intended by the legislature in a timely manner if the legislature were to increase the limit in the future. No changes have been made to the rule in response to this comment.



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**Comment from the City of Peoria:** The City disagrees with the Department on the definition of “population” as being solely the population “according to the most recent United States decennial census,” as defined in A.R.S. § 1-215(31). That statute states in the first line that these definitions are made “unless the context otherwise requires.” The City believes that the word “population” in A.R.S. § 45-118 was intended to relate the water services provided by a municipality to the term “population,” and therefore the best interpretation of the term “population” is the service area population of the municipality, which is the number of people actually receiving water delivery service from the municipality.

**Response:** The Department disagrees with this comment. A.R.S. § 45-118 provides that the Department shall assess the municipality fee “proportionally, based on the population of each municipality.” The term “population” is not defined in A.R.S. § 45-118, nor is it defined in A.R.S. § 45-101, which contains definitions applicable to all sections in Title 45, Arizona Revised Statutes. Therefore, the definition of “population” in A.R.S. § 1-215(31) applies to A.R.S. § 45-118 because the definitions in A.R.S. § 1-215 apply to “the statutes and laws in this state, unless the context otherwise requires.” A.R.S. § 1-215(31) defines “population” as “the population according to the most recent United States decennial census.”

The Department does not accept the City’s argument that the context in which the term “population” is used in A.R.S. § 45-118 requires a different definition than the definition in A.R.S. § 1-215(31). The City states that the word “population” in A.R.S. § 45-118 was intended to relate the water services provided by a municipality to the term “population.” However, there is no mention of water service in A.R.S. § 45-118. Additionally, there is nothing in A.R.S. § 45-118 to support the City’s statement that the best interpretation of the term “population” is the service area population of a municipality. In fact, such an interpretation is inconsistent with the language in A.R.S. § 45-118 because it would mean that municipalities that do not serve water are exempt from the municipality fee, yet the statute does not exclude any municipalities from the fee. If the legislature had intended the phrase “population of each municipality” in A.R.S. § 45-118 to mean the service area population of each municipality, it would have used the words “service area population” instead of “population.” Because it did not do so, the term “population” should have the meaning prescribed in A.R.S. § 1-215(31). No changes have been made to the rule in response to this comment.

**Comment from the City of Peoria:** Restricting review of the assessed fee to a mathematical error is unduly restraining. Any municipality should be free to question the fee on any grounds that may seem relevant, including calculation of the population.

**Response:** Review of the assessed fee may be requested for mathematical, clerical or typographical errors. As the calculation of a municipality’s “population” is determined by the United States Census Bureau, the Department is not the proper forum to seek review of the calculation of a municipality’s population.

**Comment from the City of Peoria:** The city recognizes that revision of A.R.S. § 45-118 will require additional legislation and expects the Department to support such future legislation.

**Response:** This comment is beyond the scope of this rulemaking.

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Not applicable

**c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:**

Not applicable

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

None

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

No

**15. The full text of the rules follows:**

**TITLE 12. NATURAL RESOURCES**

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 1. FEES

Section

R12-15-101. Definitions

R12-15-107. Municipality Fee

ARTICLE 1. FEES

**R12-15-101. Definitions**

In addition to the definitions in A.R.S. §§ 45-101, 45-271, 45-402, 45-511, 45-561, 45-802.01, 45-1001, 45-1201 and R12-15-701, the following definitions apply to this Article:

1. No change
2. "Fiscal year" means the year beginning July 1 and ending June 30.
- ~~2-3.~~ No change
4. "Municipality" means an incorporated city or town.
5. "Population" means the population according to the most recent United States decennial census.
- ~~3-6.~~ No change
- ~~4-7.~~ No change
- ~~5-8.~~ No change
- ~~6-9.~~ No change
10. "Water resources fund" means the water resources fund established by A.R.S. § 45-117.

**R12-15-107. Municipality Fee**

- A.** Each municipality in this state shall pay a fee to the Department each fiscal year in the amount calculated by the Director pursuant to subsection (B). The fee shall be paid by the dates specified in subsection (E).
- B.** The Director shall calculate a municipality's fee for a fiscal year as follows:
  1. Determine the total amount of fees the Director will assess and collect from all municipalities during the fiscal year as follows:
    - a. Determine the maximum total amount of fees the Director may assess and collect from all municipalities during the fiscal year pursuant to A.R.S. § 45-118 consistent with legislative intent. Unless the legislature expresses its intent otherwise in statute or session law, this amount shall be \$7,000,000.
    - b. Reduce the amount determined in subsection (B)(1)(a) by the amount of unobligated monies in the water resources fund at the beginning of the fiscal year, except that:
      - i. If the Director determines that such a reduction likely would prevent the Department from using all the monies appropriated to it from the water resources fund for the fiscal year, the Director may decrease the amount of the reduction or make no reduction, as appropriate, to allow the Department to use all the monies appropriated to it from the fund.
      - ii. If the Director determines such a reduction likely would result in an excessive accumulation of unobligated monies in the water resources fund at the end of the fiscal year, the Director may increase the amount of the reduction.
  2. Determine the ratio, expressed as a percentage, that the municipality's population bears to the total population of all municipalities in the state by dividing the municipality's population by the total population of all municipalities in the state.
  3. Multiply the amount from subsection (B)(1) by the percentage calculated in subsection (B)(2). The result is the municipality's fee for the fiscal year.
- C.** By July 15 of each fiscal year, the Director shall mail to each municipality a notice of the municipality's fee for that fiscal year as calculated pursuant to subsection (B), including the manner in which the fee was calculated. The notice shall be mailed to the municipality's city or town manager or city or town attorney.
- D.** A municipality may seek review of the calculation of its fee by filing a written request for review with the Director within 15 calendar days after receipt of the initial notice of the fee given by the Director under subsection (C). Review shall be limited to whether the Director's calculation of the fee contains a mathematical, clerical or typographical error. The Director shall make a final decision on a request for review and mail a final written decision to the municipality requesting the review within 10 calendar days after the date the Director receives the written request. The Director's final written decision shall state the municipality's fee following review.
- E.** A municipality shall pay at least one-half of its fee for a fiscal year by August 15 of that fiscal year and any remaining portion of the fee by January 15 of the fiscal year. If the due date for a payment falls on a weekend, the payment is due on the next business day.